

CHECKLIST 1

Conducting Preliminary Inquiries

A preliminary inquiry is very informal. The parent(s) and child need not be present at the preliminary inquiry, as testimony need not be taken. See §6.11 and Form JC 11 (Order After Preliminary Inquiry). A preliminary inquiry may be held when a child is not in temporary custody, the petition does not request placement, and the court seeks to determine appropriate action to take on a petition. See §6.12.

A preliminary inquiry may be conducted by a judge or referee, and a referee who conducts a preliminary inquiry need not be licensed to practice law in Michigan. See §6.13.

- 9 1. Examine the petition to ensure that it contains, if known:
 - 9 the child's name, address, and date of birth;
 - 9 the names and addresses of:
 - 9 the child's mother and father;
 - 9 the parent or person who has custody of the child, if other than a mother or father;
 - 9 the nearest known relative of the child, if no parent can be found; and
 - 9 any court with prior continuing jurisdiction (see §3.15);
 - 9 the essential facts which constitute an offense against the child under the Juvenile Code;
 - 9 a citation to the section of the Juvenile Code relied upon for jurisdiction (see §3.4);
 - 9 the child's membership or eligibility for membership in an American Indian tribe or band, if any, and the identity of the tribe (see §20.3);
 - 9 the type of relief requested, including whether temporary or permanent custody is sought; and
 - 9 information required by MCR 3.206(A)(4), identifying whether a Family Division matter involving members of the same family is or was pending (see §6.9).

For requirements for petitions, see §6.8.

- 9 2. Conclude the preliminary inquiry by:
 - 9 dismissing the complaint or denying authorization of the petition;
 - 9 referring the matter to alternative services; or
 - 9 authorizing the filing of the petition upon a showing of probable cause, based upon such information and in such manner as the court deems sufficient, that one or more allegations in the petition are true and fall within MCL 712A.2(b); MSA 27.3178(598.2)(b), by endorsing on the petition "authorized to be filed" and placing the matter on the formal calendar. See §§6.14 and 6.15.
- 9 3. If the petition is authorized for filing, appoint a lawyer-guardian ad litem to represent the child. See §7.10.
- 9 4. If the respondent-parent is present, advise him or her of the right to retain an attorney, and that if he or she cannot afford an attorney, the court will appoint one upon request. See §7.9.

CHECKLIST 2

Conducting Preliminary Hearings

A preliminary hearing must be held if the child is in court custody or the petition requests placement of the child. See §7.2. The court may assign a referee to conduct a preliminary hearing, and the referee need not be licensed to practice law in Michigan. See §7.3.

A preliminary hearing must commence no later than 24 hours after the child was taken into custody, excluding Sundays and holidays. If the hearing is not commenced in that time, the child must be released. The hearing may be adjourned up to 14 days to secure a parent's attendance or a witness's presence or for other good cause shown. See §§7.4-7.5.

PRELIMINARY PROCEDURES

- 9 1. Examine the petition to ensure that it complies with the requirements of MCR 5.961(B)(1)-(7). See §§6.8-6.9.
 - 9 2. Ensure that parent(s) had notice of the hearing in person, in writing, on the record, or by telephone. See §7.6.
 - 9 If a parent is not present, decide whether to adjourn the hearing or conduct the hearing without the parent's presence. See §7.15(A).
 - 9 If the court determines that the child has no father as defined in MCR 5.903(A)(4), the court may take initial testimony on the tentative identity and address of the child's natural father. See §7.8.
 - 9 3. If a party is present but did not receive notice, have the party waive in writing the notice requirements. See §§7.6 and 5.11.
 - 9 4. Appoint a lawyer-guardian ad litem to represent the child. The court may make temporary orders for the protection of the child pending appearance of the lawyer-guardian ad litem or pending completion of the hearing. See §§7.10-7.11 and 7.15(B).
 - 9 5. Inquire whether parent or child is a registered member of an American Indian tribe or band or if the child is eligible for such membership. See §7.15(F) and Checklist 9.
 - 9 6. Read the allegations in the petition in open court, unless waived. See §7.15(C).
 - 9 7. Determine if the petition should be dismissed or the matter referred to alternative services. If so, release the child; if not, continue with the hearing. See §7.15(D).
 - 9 8. If the hearing is to continue, advise the respondent-parent:
 - 9 of the right to the assistance of an attorney, and
 - 9 of the right to trial on the allegations in the petition, and that the trial may be before a referee unless the required demand for a judge or jury is made.
- See §§7.9 and 7.15(E).

PROBABLE-CAUSE DETERMINATION

- 9 9. Allow the respondent-parent to admit or deny the allegations and to make a statement of explanation. See §7.15(G).
- 9 10. Permit the petitioner to present evidence and testimony, and permit the respondent-parent to cross-examine petitioner's witnesses, subpoena his or her own witnesses, and offer proof to counter the allegations.
 - 9 A respondent-parent may waive the probable-cause determination.

See §7.16.

- 9 11. Unless the preliminary hearing is adjourned, decide whether to authorize the filing of the petition. The petition may be authorized upon a showing of probable cause that one or more allegations in the petition are true and fall within MCL 712A.2(b); MSA 27.3178(598.2)(b). Indicate whether temporary or permanent custody of the child is sought. See §§7.16 and 7.17.

ORDERING PERSON OUT OF CHILD'S HOME

- 9 12. If the following criteria are satisfied, decide whether to order a parent, guardian, custodian, nonparent adult, or other person residing in the child's home to leave the home:
 - 9 the petition, which alleges abuse of the child by the parent, guardian, custodian, nonparent adult, or other person, has been authorized for filing;
 - 9 the court finds probable cause to believe that the parent, guardian, custodian, or other person committed the abuse; and
 - 9 the court finds on the record that the presence in the home of the alleged abuser presents a substantial risk of harm to the child's life, physical health, or mental well-being.

See §7.19.

- 9 13. An order removing an alleged abuser from the child's home may contain one or more of the following conditions:
 - 9 an alleged abusive parent must pay appropriate support to maintain a suitable home environment for the child;
 - 9 an alleged abusive person must surrender to a local law enforcement agency any firearms or other potentially dangerous weapons the person owns; and
 - 9 any other reasonable conditions necessary for the child's physical or mental well-being or protection.

See §7.19.

- 9 14. Consider whether to enter an order permanently restraining a nonparent adult from coming into contact with or within close proximity to the child. See §7.23.

PLACEMENT DETERMINATION

- 9 15. Decide whether to release the child or order placement pending trial. Release of the child to a parent may be accompanied by reasonable terms or conditions believed necessary for the child's health and mental well-being. See §8.1.
 - 9 If the child was allegedly abused by a parent, guardian, custodian, or nonparent adult, do not leave the child in or return the child home, or place the child in unlicensed foster care, unless conditions of custody at the placement and with the individual with whom the child is placed are adequate to safeguard the child from the risk of harm to the child's life, physical health, or mental well-being. See §8.4.
 - 9 If the child is not released, place the child in the most family-like setting consistent with the child's needs. See §8.2.
 - 9 Inquire whether a member of the child's immediate or extended family is available to take custody of the child, whether there has been a central registry clearance of the proposed custodian, and whether a criminal history check of the proposed custodian has been initiated. See §8.2.
- 9 16. If the child was allegedly severely physically abused or sexually abused, at least consider:
 - 9 ordering the alleged abuser out of the child's home under 12. and 13., above, and
 - 9 ordering the child to be placed in licensed foster care unless conditions of custody at the placement and with the individual with whom the child is placed are adequate to safeguard the child from the risk of harm to the child's life, physical health, or mental well-being.

See §8.3.

- 9 17. If placement is ordered, make a written statement of findings or state them on the record, advise the parent regarding the Initial Services Plan, and set the case on the formal calendar. The findings may be based on hearsay evidence that has an adequate degree of trustworthiness. See §§8.1, 8.8, and 8.11.
- 9 18. Order frequent parenting time with the child in placement, unless:
 - 9 parenting time, even if supervised, would be harmful to the child. If so, order the child to undergo a psychological evaluation, counseling, or both, to determine the appropriateness and conditions of parenting time; or
 - 9 the petition requests permanent custody of the child and the parent fails to establish that parenting time will not harm the child.

See §8.9.

ORDERS FOLLOWING HEARING

- 9 19. Enter an appropriate order at the conclusion of the preliminary hearing, including the following:
 - 9 an order that provides that within 10 days of a written request, a child care agency must release all initial, updated, and revised case service plans, court orders, and medical, mental, and educational reports relating to the child. See §8.5;

- 9 an order that the child's parent, guardian, or custodian provide the child's supervising agency with the names and addresses of the child's medical providers. See §8.5;
- 9 an order that each of the child's medical providers release the child's medical records. See §8.5;
- 9 an order that requires a home study to be completed and the results submitted to the court within 30 days after placement of the child in a relative's home. See §8.2;
- 9 an order that requires the child or parent to be examined or evaluated by a physician, dentist, psychologist, or psychiatrist. See §8.10.

CHECKLIST 3

Conducting Plea Proceedings

A respondent may make a plea of admission or no contest to the original charge in the petition at any time after the petition has been authorized for filing. The court has discretion to allow a respondent to enter a plea of admission to an amended petition, provided that the child's lawyer-guardian ad litem and the petitioner receive notice of and opportunity to object to the plea. See §10.1.

The parties have the right to have a judge preside at a plea proceeding. If no demand for a judge is made, a referee who is licensed to practice law in Michigan may conduct the proceeding. See §§10.2-10.3.

- 9 1. Ensure that the appropriate persons have been notified of the hearing.
 - 9 If a party is present but did not receive notice, have the party waive in writing the notice requirements. See §10.4.
- 9 2. Advise respondent, on the record or in a writing that is made a part of the file, of the allegations in the petition or amended petition. See §10.8.
- 9 3. Advise respondent, on the record or in a writing that is made a part of the file, of the right to an attorney if the respondent is without counsel. See §10.8.
- 9 4. Inquire whether parent or child is a registered member of an American Indian tribe or band, or if the child is eligible for such membership. See Checklist 9.
- 9 5. Advise respondent, on the record or in a writing that is made a part of the file, that if the court accepts the plea, the respondent will give up the right to:
 - 9 a trial by a judge or a trial by jury;
 - 9 have the petitioner prove the allegations in the petition by a preponderance of the evidence;

- 9 have witnesses against the respondent appear and testify under oath at trial, and to cross-examine those witnesses; and
- 9 have the court subpoena any witnesses the respondent believes could give testimony in the respondent's favor.

See §10.8.

- 9 6. Advise respondent, on the record or in a writing that is made a part of the file, of the consequences of the plea, including that the plea can later be used to permanently terminate parental rights. See §10.8.
- 9 7. Ask respondent how he or she pleads:
 - 9 plea of admission, or
 - 9 plea of no contest.
- 9 8. Establish support that the plea is accurate and that the child comes within the jurisdiction of the court, by either:
 - 9 questioning the respondent if it is a plea of admission, or
 - 9 if it is a plea of no contest, by some other means.

See §10.9.

- 9 9. If a plea of no contest is accepted, state why such a plea is appropriate. See §10.10.
- 9 10. Ensure that the plea is knowingly, understandingly, and voluntarily made.
 - 9 Confirm any plea agreement on the record and ask respondent and all attorneys of record whether any promises have been made beyond those in the agreement, or whether anyone has threatened respondent. See §10.9.
 - 9 Allow respondent to make a record to preserve appropriate issues for appeal if desired. See §10.12.
- 9 11. Set a date for a dispositional hearing and determine whether the child should be returned to respondent or placed with another person. See §§8.1-8.4.
 - 9 If the child is placed outside the home, schedule the dispositional hearing to commence within 35 days. See §13.7.
- 9 12. If placement is ordered, make findings of fact and conclusions of law on the record. See §8.11.

CHECKLIST 4

Conducting Trials

If the child is not in placement, the trial must be held within 6 months after the filing of the petition. If the child is in placement, the trial must commence as soon as possible but no later than 63 days after placement. The court may adjourn or continue the trial only for good cause with factual findings on the record, and not solely upon stipulation of the parties or for the convenience of a party. Motions to adjourn or for continuance must be filed in accordance with MCR 5.923(G). See §12.4.

The court may also postpone a trial where process cannot be completed or the court finds that the testimony of a presently unavailable witness is needed. If the trial is postponed for one of these reasons, the court must release the child to the parent unless the court finds that it will likely result in physical harm or serious emotional damage to the child. See §12.4.

If respondent does not demand a trial by judge or by jury, a referee licensed to practice law in Michigan may preside at trial and continue through the dispositional phase. If respondent demands a jury trial, a judge must preside. See §12.3.

- 9 1. Unless a prior court appearance was in response to a summons, ensure that a summons was issued and served on the parent or person with whom the child resides, other than a court-ordered custodian. If the person to be served is not a parent, ensure that the parent is served with a summons in the manner required by MCR 5.920(B)(4). See §§5.3 and 12.5.
- 9 2. Determine whether the proper parties are present. The respondent has the right to be present, but the court may proceed in the absence of respondent if he or she received proper notice. The child may be excused as the court determines the child's interest requires. See §12.6.
- 9 3. If a party appears without having been properly served, allow the party to waive notice of hearing or service of process. See §5.11.
- 9 4. Ensure that the child's lawyer-guardian ad litem and, if appointed, the child's attorney and guardian ad litem are present. See §§7.10, 7.12, 7.13, 12.9, and 12.10.
- 9 5. If respondent is not represented by an attorney, advise respondent of the right to an attorney at public expense if respondent cannot afford an attorney.
 - 9 Allow respondent to waive the right to an attorney.
 - 9 If respondent is a minor, the court may not accept a waiver of the right to counsel when a parent or guardian ad litem objects to the waiver.

See §§7.9 and 12.8.

- 9 6. Conduct a trial at which the following procedures are used:
 - 9 In jury trials, the case is tried by six jurors, and a verdict may be received when five jurors agree. See §12.17.
 - 9 Each party is entitled to five peremptory challenges. See §12.14.
 - 9 Pertinent portions of SJI2d 97.01-97.15 must be given if they are applicable, they accurately state the applicable law, and they are requested by a party. See §12.15.
 - 9 The court reads aloud the allegations in the petition, unless waived. See §12.12.
 - 9 The court explains the nature of the proceedings. See §12.12.
 - 9 The standard of proof is a preponderance of the evidence, notwithstanding that the petition contains a request for termination of parental rights. See §12.11.
 - 9 The rules of evidence for a civil proceeding apply, except that, under MCR 5.972(C)(2), an out-of-court statement of a child under 10 years of age describing an act of child abuse as defined in MCL 722.622(c); MSA 25.248(2)(c), performed with or on the child may be admitted into evidence if the court has found prior to trial that the nature and circumstances surrounding the giving of the statement provide adequate indicia of trustworthiness and that there is sufficient corroborative evidence of the act. See §11.7.
 - 9 Any legally recognized privileged communication except that between attorney and client is abrogated. See §§11.4 and 12.11.
 - 9 At the conclusion of the trial, the judge, referee, or jury decides whether the child comes within the jurisdiction of the court as alleged in the petition. See §12.1.
- 9 7. If the judge, referee, or jury determines that the child comes within the jurisdiction of the court, set a date for a dispositional hearing no later than 35 days from the close of trial, and order placement of the child. See §§13.7 and 8.1-8.4.
 - 9 If the judge, referee, or jury finds that the child is not within the jurisdiction of the court, dismiss the petition. See §12.1.
- 9 8. The court may issue an order that requires a nonparent adult to participate in the development of a Case Service Plan. See §13.21.

CHECKLIST 5

Conducting Dispositional Hearings at Which Termination of Parental Rights Is Not Requested

An initial dispositional hearing at which termination of parental rights is not considered is conducted to determine measures to be taken by the court with respect to a child within its jurisdiction and, when applicable, against any adult. See §13.2.

The interval between the trial and dispositional hearing is within the court's discretion. However, when the child is in placement, the interval may not exceed 35 days, except for good cause. See §13.7. Note that a Case Service Plan must be prepared and made available to the court and all parties prior to a dispositional hearing. See §§12.2 and 13.19.

It may avoid delay to require the petitioner, prior to the hearing, to list evidence that will be tendered by written report and to provide that list to the attorneys for the respondent and child. If either attorney wishes to cross-examine the author of a report, that attorney may subpoena the report's author. See §13.16(B).

- 9 1. If the child is in placement and a physician diagnosed the child's abuse or neglect as involving failure to thrive, Munchausen Syndrome by Proxy, Shaken Baby Syndrome, a bone fracture resulting from abuse or neglect, or drug exposure, ensure that the child's attending and primary care physicians were notified of the time and place of the hearing. See §13.9.
 - 9 2. Determine whether the proper parties are present. The respondent has the right to be present, but the court may proceed in the absence of respondent if he or she received proper notice. The child may be excused as the court determines the child's interest requires. See §13.11.
 - 9 3. If a party appears without having been properly served, allow the party to waive notice of hearing or service of process. See §5.11.
 - 9 4. Ensure that the child's lawyer-guardian ad litem and, if appointed, the child's attorney and guardian ad litem are present. See §§7.10, 7.12, 7.13, 13.13, and 13.14.
 - 9 5. If respondent is not represented by an attorney, advise respondent of the right to an attorney at public expense if respondent cannot afford an attorney.
 - 9 Allow respondent to waive the right to an attorney.
 - 9 If respondent is a minor, the court may not accept a waiver of the right to counsel when a parent or guardian ad litem objects to the waiver.
- See §§7.9 and 13.12.
- 9 6. Conduct a dispositional hearing on the record at which the following rules apply:
 - 9 The Michigan Rules of Evidence do not apply. All relevant and material evidence, including oral and written reports, may be received and relied upon to the extent of its probative value, even though such evidence may not be admissible at trial. See §13.16.
 - 9 Consider the Case Service Plan and any written or oral information offered concerning the child

from the child's parent, guardian, custodian, foster parent, child caring institution, relative with whom the child is placed, or lawyer-guardian ad litem, attorney, or guardian ad litem. See §13.16(A).

- 9 Consider any other evidence or information offered bearing on the disposition, including the appropriateness of parenting time. See §13.16(A).
- 9 Give the parties an opportunity to examine and controvert written reports received by the court and, in the court's discretion, allow the parties to cross-examine the individuals making reports when the individuals are reasonably available. Foster parents, child caring institutions, or relatives with whom a child is placed do not have the right to controvert written reports or to cross-examine individuals making such reports. See §13.16(B).
- 9 No assertion of an evidentiary privilege, other than the attorney-client privilege, shall prevent the receipt and use of materials prepared pursuant to court-ordered examination, interview, or course of treatment. See §13.17.
- 9 If the child is in placement and a physician diagnosed the child's abuse or neglect as involving failure to thrive, Munchausen Syndrome by Proxy, Shaken Baby Syndrome, a bone fracture resulting from abuse or neglect, or drug exposure, allow the child's attending or primary care physician to testify regarding the Case Service Plan. See §§13.18 and 13.20.
- 9 7. After review of the Case Service Plan, enter an order of disposition, which may include any of the following:
 - 9 the "reasonable efforts" made to prevent the child's removal from home or to rectify the conditions that caused the child to be removed from home. See §13.22;
 - 9 compliance with all or part of the Case Service Plan as the court deems necessary. See §13.25;
 - 9 required compliance by a nonparent adult with all or part of the Case Service Plan. See §13.21;
 - 9 any of the dispositional alternatives in MCL 712A.18(1); MSA 27.3178(598.18)(1), that are appropriate for the welfare of the child and society in view of the facts proven and ascertained. See §13.24;
 - 9 an order for reimbursement by the parent, guardian, or custodian to the court for the cost of care or service. See §§13.27-13.28.
- 9 8. If a referee conducted the dispositional hearing, the referee must inform the minor, parent, and respondent of the right to file a request for review of the referee's recommended findings and conclusions. See §13.23 and Chapter 14.
- 9 9. If the child is in a placement other than a permanent foster family agreement or a relative placement intended to be permanent, schedule a dispositional review hearing no later than 91 days following entry of the order of disposition. See §§13.22 and 16.8.
 - 9 If the child is not removed from the home, schedule a progress review no later than 182 days after entry of the order of disposition. See §16.19.

CHECKLIST 6

Conducting Hearings on Requests for Termination of Parental Rights

The interval between the trial or plea and an initial dispositional hearing at which termination of parental rights is requested is within the court's discretion. However, when the child is in placement, the interval may not exceed 35 days, except for good cause. See §13.7. If the court orders the FIA to file a supplemental petition requesting termination following a review hearing or permanency planning hearing, a hearing must be held within 42 days of the filing of the petition, except that the court may, for good cause shown, extend this period for 21 days. See §§18.18(A) and 18.19(A)-(B).

When a petition requesting termination of parental rights is filed, parenting time for a respondent is automatically suspended and remains suspended at least until a decision is issued on the termination petition. However, if the parent establishes and the court determines that parenting time will not harm the child, the court may order parenting time in the amount and under conditions the court deems appropriate. See §18.11.

It may avoid delay to require the petitioner, prior to the hearing, to list evidence that will be tendered by written report and to provide that list to the attorneys for the respondent and child. If either attorney wishes to cross-examine the author of a report, that attorney may subpoena the report's author. See §§18.14(A), 18.17(B), 18.18(C), and 18.19(C).

PRELIMINARY PROCEDURES

- 9 1. Unless a prior court appearance was in response to a summons, ensure that a summons was issued and served on the parent or person with whom the child resides, other than a court-ordered custodian. If the person to be served is not the respondent, ensure that the respondent is served with a summons in the manner required by MCR 5.920(B)(4). See §§5.3 and 18.10.
- 9 2. Determine whether the proper parties are present. The respondent has the right to be present, but the court may proceed in the absence of respondent if he or she received proper notice. The child may be excused as the court determines the child's interest requires.
 - 9 If a party is absent, ensure proper notice was given and that a reasonable effort was made to obtain the party's presence before proceeding with the hearing.

See §18.10.

- 9 3. If a party appears without having been properly served, allow the party to waive notice of hearing or service of process. See §§5.11 and 18.10.
- 9 4. Ensure that the child's lawyer-guardian ad litem and, if appointed, the child's attorney and guardian ad litem are present. See §§7.10, 7.12, 7.13, and 18.8.

- 9 5. If respondent is not represented by an attorney, advise respondent of the right to an attorney at public expense if respondent cannot afford an attorney.
- 9 Allow respondent to waive the right to an attorney.
- 9 If respondent is a minor, the court may not accept a waiver of the right to counsel when a parent or guardian ad litem objects to the waiver.

See §§7.9 and 18.7.

RULES OF EVIDENCE

- 9 6. Conduct a termination hearing on the record at which the following rules of evidence apply:
 - 9 The statutory basis for termination of parental rights must be established by clear and convincing evidence. See §§18.13 and 18.26-18.40.
 - 9 If the court finds that at least one statutory ground for termination has been established, the court must order termination unless the court finds that termination is clearly not in the child's interest. See §18.14.
 - 9 The parent has the burden of going forward with evidence that termination is clearly not in the child's interest. See §18.14.
 - 9 If termination of parental rights is being considered at an initial dispositional hearing or on the basis of changed circumstances:
 - 9 legally admissible evidence must be used to establish the statutory basis for termination. See §§18.13, 18.17(B), and 18.18(B), and
 - 9 all relevant and material evidence, including oral and written reports, may be received and relied upon to the extent of its probative value when determining whether termination of parental rights is clearly not in the child's best interest. See §§18.17(B) and 18.18(C).
 - 9 the parties must be afforded an opportunity to examine and controvert written reports received and must be allowed to cross-examine individuals who made the reports when they are reasonably available. See §§18.17(B) and 18.18(C).
 - 9 If termination is being considered regarding a child in foster care, all relevant and material evidence, including oral and written reports, may be received and relied upon to the extent of its probative value when determining both whether a statutory basis exists and whether termination is clearly not in the child's best interest. See §18.19(C)-(D).
 - 9 the parties must be afforded an opportunity to examine and controvert written reports received and must be allowed to cross-examine individuals who made the reports when they are reasonably available. See §18.19(C).

STANDARDS FOR TERMINATION OF PARENTAL RIGHTS

9 7. Conclude the hearing by determining whether respondent(s) parental rights should be terminated.

At Initial Dispositional Hearing

- 9 Terminate parental rights at the initial dispositional hearing if:
 - 9 the original or amended petition requested termination;
 - 9 the court's jurisdiction under MCL 712A.2(b); MSA 27.3178(598.2)(b), was established by a preponderance of the evidence;
 - 9 the court finds by clear and convincing legally admissible evidence introduced at a trial or plea proceeding on the issue of court jurisdiction that one or more allegations in the petition:
 - 9 are true;
 - 9 justify an order of termination at the initial dispositional hearing; and
 - 9 come within MCL 712A.19b(3); MSA 27.3178(598.19b)(3);
 - 9 unless the court finds that termination is not in the best interest of the child.

See §18.17(B).

On the Basis of Changed Circumstances

- 9 Terminate parental rights on the basis of changed circumstances if:
 - 9 a supplemental petition was filed alleging one or more circumstances that are new or different from the offense for which the court took jurisdiction; and
 - 9 clear and convincing legally admissible evidence establishes the statutory basis for termination;
 - 9 unless the court finds that termination is clearly not in the best interest of the child.

See §18.18(B)-(C).

When the Child Is In Foster Care

- 9 Terminate parental rights to a child in foster care if:
 - 9 a supplemental petition was filed seeking termination; and
 - 9 clear and convincing, relevant and material evidence establishes a statutory basis for termination;
 - 9 unless the court finds that termination is clearly not in the best interest of the child.

See §18.19(C)-(D).

- 9 8. State on the record or in writing findings of fact and conclusions of law. An opinion or order must be issued within 28 days but no later than 70 days of the commencement of the initial hearing on termination of parental rights. See §18.20.
- 9 9. Immediately after entering an order terminating parental rights, advise the respondent(s) orally or in writing of the rights to appeal and appointment of appellate counsel, per MCR 5.974(H)(1)(a)-(d). See §§18.21-18.22.
- 9 10. Unless a child is in a permanent foster family agreement or is placed with a relative in a placement intended to be permanent, schedule a review hearing for not more than 91 days after the termination hearing. See §§16.8 and 19.3-19.4.

CHECKLIST 7

Conducting Dispositional Review Hearings

When a child is in foster care, the court must conduct dispositional review hearings to determine progress made in complying with any order of disposition and with the Case Service Plan, and to evaluate the continued need for and appropriateness of foster care. See §16.1.

A dispositional review hearing must be conducted not more than 91 days after entry of the order of disposition, and every 91 days thereafter so long as the child is subject to the jurisdiction, control, or supervision of the court, the Michigan Children's Institute, or other agency. See §16.8. A dispositional review hearing may be combined with a permanency planning hearing. See §16.10 and Checklist 8.

If the requisite seven days' notice was given to all parties or notice of hearing was waived, and if no party requests a hearing within the seven-day period, the court may issue an order permitting the agency to return the child home without holding a hearing. See §16.12.

It may avoid delay to require the petitioner, prior to the hearing, to list evidence that will be tendered by written report and to provide that list to the attorneys for the respondent and child. If either attorney wishes to cross-examine the author of a report, that attorney may subpoena the report's author. See §13.16(B).

- 9 1. Before the hearing, ensure that the updated and revised Case Service Plan has been filed with the court and is accessible to all parties. See §§16.13(B) and 16.14.
- 9 2. Ensure that notice of the dispositional review hearing was given to the proper persons, or that the hearing was scheduled on the record at the last hearing. See §§13.32 and 16.11.
- 9 If the child is in placement and a physician diagnosed the child's abuse or neglect as involving failure to thrive, Munchausen Syndrome by Proxy, Shaken Baby Syndrome, a bone fracture resulting from abuse or neglect, or drug exposure, ensure that the child's attending and primary

care physicians were notified of the time and place of the hearing. See §16.11.

- 9 3. If a party appears without having been properly served, allow the party to waive notice of hearing or service of process. See §5.11.
- 9 4. Ensure that the child's lawyer-guardian ad litem and, if appointed, the child's attorney and guardian ad litem are present. See §§7.10, 7.12, 7.13, 16.5, and 16.6.
- 9 5. If respondent is not represented by an attorney, advise respondent of the right to an attorney at public expense if respondent cannot afford an attorney.
 - 9 Allow respondent to waive the right to an attorney.
 - 9 If respondent is a minor, the court may not accept a waiver of the right to counsel when a parent or guardian ad litem objects to the waiver.

See §§7.9 and 16.4.

- 9 6. Conduct the dispositional review hearing in accordance with the procedures and rules of evidence applicable to a dispositional hearing. See §16.13 and Checklist 5.
 - 9 Ensure that the agency's report that was filed with the court is offered into evidence. See §16.13(C).
 - 9 Upon motion by a party or by the court in its own discretion, the hearing may be accelerated to review any element of the Case Service Plan. See §16.13(D).
 - 9 The Michigan Rules of Evidence do not apply. All relevant and material evidence, including oral and written reports, may be received and relied upon to the extent of its probative value. See §§13.16 and 16.13.
 - 9 Consider any written or oral information offered concerning the child from the child's parent, guardian, custodian, foster parent, child caring institution, relative with whom the child is placed, or lawyer-guardian ad litem, attorney, or guardian ad litem. See §§13.16(A) and 16.13.
 - 9 Consider any other evidence or information offered bearing on the disposition, including the appropriateness of parenting time. See §§13.16(A) and 16.13.
 - 9 Give the parties an opportunity to examine and controvert written reports received by the court and, in the court's discretion, allow the parties to cross-examine the individuals making reports when the individuals are reasonably available. Foster parents, child caring institutions, or relatives with whom a child is placed do not have the right to controvert written reports or to cross-examine individuals making such reports. See §13.16(B).
 - 9 No assertion of an evidentiary privilege, other than the attorney-client privilege, shall prevent the receipt and use of materials prepared pursuant to court-ordered examination, interview, or course of treatment. See §13.17.
 - 9 If the child is in placement and a physician diagnosed the child's abuse or neglect as involving failure to thrive, Munchausen Syndrome by Proxy, Shaken Baby Syndrome, a bone fracture

resulting from abuse or neglect, or drug exposure, allow the child's attending or primary care physician to testify regarding the updated and revised Case Service Plan. See §§13.18, 13.20, and 16.14.

- 9 7. Review the progress made toward compliance with the updated and revised Case Service Plan, considering:
 - 9 compliance with the Case Service Plan with respect to services provided or offered to the child, parent, guardian, custodian, or nonparent adult (if appropriate);
 - 9 whether the child, parent, guardian, custodian, or nonparent adult (if appropriate) have benefitted from services provided or offered;
 - 9 compliance with provisions for parenting time in the Case Service Plan;
 - 9 if parenting time did not occur or was infrequent, determine why;
 - 9 the extent to which the parent complied with each provision of the Case Service Plan, prior court orders, and any agreement between the parent and agency;
 - 9 likely harm to the child if the child continues to be separated from his or her parent, guardian, or custodian; and
 - 9 likely harm to the child if the child is returned to his or her parent, guardian, or custodian.

See §16.14.

- 9 8. Determine the extent of progress made to alleviate or mitigate conditions that caused the child to be placed and remain in foster care. See §16.15.
- 9 9. At the conclusion of the hearing, the court may:
 - 9 order the child returned home;
 - 9 modify the disposition order;
 - 9 modify any part of the Case Service Plan;
 - 9 enter a new disposition order; or
 - 9 continue the prior disposition order.

See §§16.16 and 16.17.

- 9 10. Determine and set the interval for the next review hearing. The hearing must be conducted not more than 91 days from the last review hearing unless the court shortens the interval. In deciding whether to shorten the interval between hearings, consider:
 - 9 the ability and motivation of the parent to make changes needed to provide the child a suitable home environment, and
 - 9 the reasonable likelihood that the child will be ready to return home earlier than the next scheduled dispositional review hearing.

See §16.9.

CHECKLIST 8

Conducting Permanency Planning Hearings

Permanency planning hearings are conducted to review the progress being made toward returning home a child in foster care, or to show why the child should not be made a permanent ward of the court. See §17.1.

The court must conduct a permanency planning hearing not more than 364 days after an original petition has been filed. See §17.2. A permanency planning hearing may be combined with a dispositional review hearing. See §17.2 and Checklist 7.

It may avoid delay to require the petitioner, prior to the hearing, to list evidence that will be tendered by written report and to provide that list to the attorneys for the respondent and child. If either attorney wishes to cross-examine the author of a report, that attorney may subpoena the report's author. See §17.9(B).

- 9 1. Ensure that notice of the permanency planning hearing was given to the proper persons, or that the hearing was scheduled on the record at the last hearing.
 - 9 If the child is in placement and a physician diagnosed the child's abuse or neglect as involving failure to thrive, Munchausen Syndrome by Proxy, Shaken Baby Syndrome, a bone fracture resulting from abuse or neglect, or drug exposure, ensure that the child's attending and primary care physicians were notified of the time and place of the hearing.

See §17.3.

- 9 2. If a party appears without having been properly served, allow the party to waive notice of hearing or service of process. See §5.11.
- 9 3. Ensure that the child's lawyer-guardian ad litem and, if appointed, the child's attorney and guardian ad litem are present. See §§7.10, 7.12, 7.13, 17.6, and 17.7.
- 9 4. If respondent is not represented by an attorney, advise respondent of the right to an attorney at public expense if respondent cannot afford an attorney.
 - 9 Allow respondent to waive the right to an attorney.
 - 9 If respondent is a minor, the court may not accept a waiver of the right to counsel when a parent or guardian ad litem objects to the waiver.

See §§7.9 and 17.5.

- 9 5. Conduct the permanency planning hearing in accordance with the following rules of evidence:
 - 9 The Michigan Rules of Evidence do not apply. All relevant and material evidence, including oral

and written reports, may be received and relied upon to the extent of its probative value.

- 9 Consider any written or oral information offered concerning the child from the child's parent, guardian, custodian, foster parent, child caring institution, relative with whom the child is placed, or lawyer-guardian ad litem, attorney, or guardian ad litem.
- 9 Consider any other evidence or information offered at the hearing, including evidence bearing on the appropriateness of parenting time.
- 9 Give the parties an opportunity to examine and controvert written reports received by the court and, in the court's discretion, allow the parties to cross-examine the individuals making reports when the individuals are reasonably available.
- 9 If the child is in placement and a physician diagnosed the child's abuse or neglect as involving failure to thrive, Munchausen Syndrome by Proxy, Shaken Baby Syndrome, a bone fracture resulting from abuse or neglect, or drug exposure, allow the child's attending or primary care physician to testify regarding the updated and revised Case Service Plan.

See §17.9.

- 9 6. At the conclusion of the hearing, do the following:
 - 9 Unless the court determines that it would cause a substantial risk of harm to the life, physical health, or mental well-being of the child, the court must return the child home.
 - 9 Failure of the parent to substantially comply with the Case Service Plan is evidence that returning the child home would cause a substantial risk of harm to the child's life, physical health, or mental well-being.
 - 9 Consider any condition or circumstance that may be evidence that returning the child home would cause a substantial risk of harm to the child's life, physical health, or mental well-being.

See §17.10(A).

- 9 If the child is not to be returned home, order:
 - 9 continuation of the child's foster care placement, and
 - 9 the Family Independence Agency to initiate proceedings to terminate parental rights within 42 days, unless the FIA establishes and the court finds that termination is clearly not in the best interest of the child at the present time.

See §17.10(B).

- 9 If the FIA establishes that termination is clearly not in the best interest of the child at the present time, order one of the following:
 - 9 if the court finds that permanent placement is not possible, continue the child's foster care placement for a limited time, or
 - 9 if it is in the child's best interest, continue the child's foster care placement on a long-term basis.

See §17.10(C).

- 9 7. Schedule a review hearing to be held not more than 91 days after the permanency planning hearing.

- 9 If the child is in a permanent foster family agreement or is placed with a relative in a placement intended to be permanent, schedule a review hearing not more than 182 days after the permanency planning hearing.

CHECKLIST 9

Conducting Custody Proceedings Involving American Indian Children

In addition to the regular procedures, the following procedures are required for custody proceedings involving American Indian children. See §20.1. An “Indian child” means any unmarried person under age 18 who is either (a) a member of an Indian tribe or (b) eligible for membership and the biological child of a member of an Indian tribe. See §20.3.

Determining Applicability of Indian Child Welfare Act

- 9 If known, the petitioner must include in the petition the child’s membership or eligibility for membership in an American Indian tribe or band. If unknown, the petitioner must state in the petition that the information is unknown. See §20.3(B).
- 9 At the preliminary hearing or first hearing on the record, the court must inquire if the child or parent is a registered member of any American Indian tribe or band, or if the child is eligible for such membership. If either is true, the court must ensure that the petitioner notifies the tribe or band and must follow the procedures listed below. See §20.3(C).

Notice and Transfer Requirements

- 9 If the Indian child resides on a reservation or is under tribal court jurisdiction, transfer the case to the tribal court having jurisdiction. See §20.4(A).
- 9 If the child does not reside on a reservation and is not under tribal court jurisdiction, ensure that the petitioner has given notice of the proceedings to the child’s tribe and parent or Indian custodian. If the tribe is unknown, ensure that the petitioner has given notice to the Secretary of the Interior. See §20.4(B).
- 9 If notice is given to the Secretary of the Interior, allow for the additional time periods provided in 25 USC 1912(a) before placement or termination proceedings are begun. See §20.5.
- 9 If the tribe exercises its right to request transfer of the proceeding to tribal court, transfer the case unless either parent objects or the court finds good cause not to transfer. See §20.4(C).
- 9 The perceived inadequacy of the tribal court or tribal services does not constitute good cause to refuse transfer. See §20.4(C).

Emergency Removal of Child

- 9 An Indian child who resides on a reservation, or who is domiciled on a reservation but is temporarily located off the reservation, must not be removed from a parent unless the removal is to prevent immediate physical harm to the child.

- 9 An Indian child not residing or domiciled on a reservation may be temporarily removed from the parent if the child's health, safety, or welfare is endangered.

See §20.7.

Placement

- 9 Except in cases of emergency removal, an Indian child shall not be removed from his or her home unless there is clear and convincing evidence, including testimony by qualified expert witnesses, that services designed to prevent the break-up of the Indian family were furnished, and that continued custody of the minor by the parent is likely to result in serious emotional or physical damage to the child. See §20.8.
- 9 If an Indian child is removed from his or her home, placement must be with the following, in descending order of preference:
 - 9 a member of the child's extended family;
 - 9 a foster home licensed, approved, or specified by the child's tribe;
 - 9 an Indian foster family licensed or approved by a non-Indian licensing authority;
 - 9 an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the child's needs.

The court may order another placement for good cause shown. See §20.9.

Termination of Parental Rights

- 9 Termination of parental rights to an Indian child shall not be ordered unless the following requirements are met:
 - 9 there must be evidence beyond a reasonable doubt, including testimony of qualified expert witnesses, that continued custody of the child by the parent will likely result in serious emotional or physical damage to the child; and
 - 9 there is clear and convincing evidence that termination is supported under one of the statutory grounds listed in MCL 712A.19b(3); MSA 27.3178(598.19b)(3).

See §20.10.

- 9 To obtain a valid consent from the child's parent or custodian to voluntary foster care placement or voluntary termination of parental rights, the following procedure must be used:
 - 9 the consent must be executed in writing before a judge of a court of competent jurisdiction;
 - 9 the presiding judge must certify that the terms and consequences of the consent were fully explained in detail and were fully understood by the child's parent or custodian;
 - 9 the judge must certify either that the parent or custodian understood the explanation in English or that it was translated into a language that the parent or custodian understood;
 - 9 a valid consent may not be given prior to the birth of the Indian child, or within 10 days after the birth of the Indian child; and
 - 9 the parent or custodian may withdraw consent to foster care placement at any time, and may

withdraw consent to termination of parental rights or adoption any time prior to the entry of a final decree of termination or adoption, as the case may be.

See §20.11.